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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,749	12/03/2003	Glen Hartman	GHA1-G87	6806
50496	7590	01/11/2006	EXAMINER	
GLEN HARTMAN 1432 HORN CANYON AVE. CHULA VISTA, CA 91915			RESTIFO, JEFFREY J	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/726,749	Applicant(s) HARTMAN, GLEN	
	Examiner Jeffrey J. Restifo	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgments

1. Acknowledgment is made of the amendment filed 10/21/05.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Seals (US 6,611,986 B1).

Seals discloses a storage container 10 able to store pet food, said container comprising a housing 20 with main chamber and opening defined by an outer surface and bottom wall (not numbered) covered by lid 16, an elevation adjusting means or biasing device or spring 40, and a platform 42, as shown in figure 1. The pet food is an intended use and therefore has been given little patentable weight.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3, 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seals, as applied to claims 1 above, and further in view of Kaiser, II (US 5,480,170 A).

With respect to claims 2, 3, and 5-8, Seals does not disclose a pivoting tray, rolling means, or extending handle. Kaiser, II does disclose a wheeled container comprising pivoting tray 26 attached to the sides of the with inherent attachment device, as shown in figure 1. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the container of Seals with the tray of Kaiser, II in order to provide support for additional items.

With respect to claim 9, Walton et al. discloses a second handle on the front, as shown in figure 1.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walton et al. as modified by Kaiser, II, as applied to claim 9 above, and further in view of Waller et al. (US 6,648,349 B1).

Neither Seals nor Kaiser, II disclose an auxiliary container. Waller et al. does disclose a container 10 with auxiliary container 32, as shown in figure 1. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the container of Seals, as modified by Kaiser, II, with the auxiliary container of Waller et al. in order to allow a user to store smaller items.

7. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaiser, II (US 5,480,170 A) and in further view of Seals (US 6,611,986 B1).

With respect to claims 11-13, Kaiser, II discloses a container 10 comprising a wheel 14, tray 26, lid 25, as shown in figures 1-11. Seals discloses a storage container 10, said container comprising a housing 20 with main chamber and opening defined by an outer surface and bottom wall (not numbered) covered by lid 16, an elevation adjusting means or biasing device or spring 40, and a platform 42, as shown in figure 1. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the container of Kaiser, II with the elevating platform of Seals in order to dispense the articles in the container, such a pet food or human food. Since the pet food is an intended item for storage in the container, it would have been obvious to one having ordinary skill in the art at the time of the invention to have applied the biased container of Seals to any type of container requiring a biased platform for dispensing the articles in the container, including pet food, trash, or any other commonly contained items. Seals does not disclose a wheel or

With respect to claim 14, lids with sealing gaskets are well-known in the art and it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the lid of Kaiser, II with a sealing gasket in order to seal the container air tight.

With respect to claim 15, Kaiser, II discloses a telescoping handle 16. It would have been obvious to one having ordinary skill in the art at the time of the invention to

have provided the container of Walton et al. with the telescoping handle of Kaiser, II in order to allow a user to pull the cart.

8. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaiser, II (US 5,480,170 A) and in further view of Seals (US 6,611,986 B1).

All the limitations recited in claims 16-20 have been addressed in the rejection of claims 1-15 above.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that Kaiser, II is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, containers are not defined by what the store, but by their purpose of storing items, and therefore any container, within relative size and structural constraints, are viewed as analogous. Also, considering pets eat anything, including trash, most containers can be considered pet food containers.

The applicant's amendment warranted the addition of the Seals reference.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

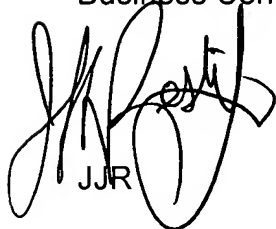
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (571)272-6697. The examiner can normally be reached on M-F 10-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571)272-6914. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JJR